

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 26, 2001

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 99-C-1684 - Petition filed by the Independent Payphone Association of New York, Inc. that the Commission Modify New York Telephone Company's Wholesale Payphone Service Rates and Award Refunds.

Case 96-C-1174 - Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996.

ORDER DENYING PETITION FOR REHEARING
OF OCTOBER 12, 2000 ORDER

(Issued and Effective September 21, 2001)

BY THE COMMISSION:

BACKGROUND

On October 12, 2000, the Commission issued its Order Approving Permanent Rates and Denying Petition for Rehearing, approving permanent rates for Public Access Smart-Pay Lines (PASPL) and continuing rates for Public Access Lines (PALs) and other payphone services at current levels. It also denied a petition of the Independent Payphone Association of New York (IPANY) for new rates for PALs and other payphone services and for refunds.

On December 8, 2000, IPANY filed a petition for rehearing of the October 12, 2000 Order, claiming the Order was inconsistent with federal law and Commission precedent. IPANY filed a letter supplementing its petition on January 3, 2001. Verizon filed a letter on January 3, 2001 asking the Commission to disregard IPANY's supplement or to extend the Reply date to January 16, 2001. Verizon filed its Opposition to IPANY's petition on January 16, 2001. On March 14, 2001, IPANY filed a letter attaching a copy of a Maryland PSC Order.

IPANY's Petition

In its petition, IPANY argues that Verizon's tariff does not meet the FCC's New Services Test,¹ which it says requires the use of forward looking, direct cost methodology. IPANY argues that the Commission's finding that Verizon's rates reflect direct embedded costs plus a reasonable contribution toward common costs and overhead was inconsistent with the New Services Test. IPANY says the Commission erroneously failed to follow the Federal Communications Commission (FCC) Common Carrier Bureau's March 2, 2000 Order. It argues that the Bureau's instructions to Wisconsin companies are a roadmap that also applies in New York.

IPANY continues that the 30% overhead cost used by the Commission is inaccurate, since it does not include the End User Common Line Charge (EUCL), Primary Interexchange Carrier Charge

¹ 47 CFR § 61.49(g)(2) governs the rate parameters for new service offerings that are payphone specific, network based features and functions used in configuring payphone operations. When a local exchange company (LEC) introduces a new service, it must set the rates for the new service based on direct costs plus a reasonable allocation for overhead.

(PICC) and Common Carrier Line Charge (CCL) paid by independent payphone providers to Verizon.

IPANY argues that the Commission should allow Total Element Long Run Incremental Cost (TELRIC) rates for PALs to non-competitive local exchange company (non-CLEC) payphone providers. It notes that the Commission required incumbent LECs to provide to non-carrier providers access to their directory databases to promote competition, when the FCC required access only to carriers.

IPANY contests Verizon's contention that Independent Payphone Providers (IPPs) should be treated like other retail business customers because it is more costly for Verizon to service them. IPANY argues that Verizon's costs are the same for providing payphone service to CLECs and IPPs.

Finally, IPANY argues that since the payphone industry is being hurt economically by competition from the cellular phone industry, payphone owners require lower PAL rates to remain viable. It states that over the last two years, 3,000 payphones were pulled from New York State by IPPs.² It concedes that Verizon has installed additional payphones during that time, but states they are mostly curbside locations in business areas of Manhattan, Brooklyn and Queens. The curbside locations allow advertising to subsidize costs and make the payphones profitable, according to IPANY.

IPANY's supplementary material includes a list of IPPs with declining stock prices and a Massachusetts Department of Telecommunications and Energy Order, which it argues, provides a separate rate category for PALs. IPANY also sent a Maryland PSC Order, which required an overhead-loading factor of 12% and followed the FCC Common Carrier Order of March 2, 2000.

² IPANY's petition at 17.

VERIZON'S RESPONSE

Verizon opposes IPANY's petition for rehearing. It agrees with the Commission's October Order finding that the FCC Common Carrier Bureau Order applies only to certain Wisconsin companies named in the Order. Verizon points out that the principles in the Common Carrier Bureau Order have not been applied to the Wisconsin companies or to anyone else.

Verizon states that the Commission's October Order correctly applied the FCC's requirements for the New Services Test. It states that the FCC has approved contribution levels in excess of Verizon's PAL rates.

Verizon contests IPANY's contentions that providing PALs and other services to CLECs and IPPs are the same. It states that handling service requests, addressing repair problems and providing bills is more costly for IPPs than CLECs.

Verizon argues that the PICC charge should not be included in overhead because it provides for recovery of costs other than those incurred in providing PALs. Verizon also contends that IPANY incorrectly claimed that the New Services Test applied to usage rates. Verizon reiterates that the Test applies only to payphone-specific features, not usage.

Verizon argues that the Massachusetts Order does not support IPANY's position and instead holds that payphone service providers must be treated like retail customers by a LEC. Verizon claims that requiring TELRIC pricing of payphone services would hurt wholesale competition in New York. CLECs currently purchase payphone-related services from Verizon and compete with Verizon for retail PSP customers. According to Verizon, this competition keeps retail PAL rates low. Also, if PSPs received TELRIC rates, they would receive service for significantly less than other unregulated businesses.

Verizon contends that IPANY's arguments about the health of the payphone industry are irrelevant. It continues that the financial condition of some members of the industry does not justify a price break. Verizon notes that 2000 permits for new payphone lines will be issued in the first quarter of 2001. Verizon opposes any refunds in this proceeding.

DISCUSSION

IPANY has not raised any new issues in its petition that were not considered and rejected previously. We determined that Verizon's rates are consistent with the FCC's New Services Test, and that the FCC Common Carrier Bureau Order, by its terms, is not binding in New York. As pointed out in the October Order, CLECs are entitled to TELRIC rates for PALs as unbundled network elements (UNEs) under federal law, but payphone service providers (PSPs), as end users, are not. We again find persuasive Verizon's argument that it costs more to provide service to PSPs than to CLECs. As to the other state commission orders presented by IPANY, they are not binding on this Commission.

With regard to the payphone market, while we recognize that some competitors are struggling, the number of payphones in the State has experienced a modest decline in recent years.³ We have not received a single request for a Public Interest Payphone (PIP), so there is no evidence that payphones in critical areas have been removed and the public is suffering as a result.

³ The number of payphones in New York declined by about 7% since 1995 (174,000 in 1995 to 161,000 in 2000). The number was 180,000 in 1998 suggesting a more significant decline rate, but also suggesting the market may be correcting for an overbuild.

CONCLUSION

IPANY has not raised any new issues or presented persuasive arguments that the October Order should be modified. IPANY's petition for reconsideration of the October Order is denied.

The Commission orders:

1. The petition for rehearing of the October 12, 2000 order by the Independent Payphone Association of New York is denied.

2. These proceedings are continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary